

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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A.D.,	:
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Plaintiff,	:
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-v-	:
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NEW YORK STATE DEPARTMENT OF	:
CORRECTIONS AND COMMUNITY SUPERVISION,	:
et al.,	:
	:
Defendants.	:
	:
-----X	

21cv5970 (DLC)

MEMORANDUM OPINION
AND ORDER

APPEARANCES:

For plaintiff:
O. Williams Igbokwe
Igbokwe, PLLC
28 Liberty Street, 6th Floor
New York, NY 10005

For defendants:
Jeb Harben
New York State Office of the Attorney General
28 Liberty Street, 15th Floor
New York, NY 10005

DENISE COTE, District Judge:

The plaintiff has requested leave to file a third amended complaint. For the following reasons, the request for leave to amend is granted.

Background

On July 12, 2021, the plaintiff filed this lawsuit alleging, inter alia, that the defendants -- several New York

state agencies and officials -- were liable to him under 42 U.S.C. § 1983 because they violated his Constitutional rights by delaying his release from prison beyond the expiration of his sentence because he was unable to confirm housing in a mental health facility upon his release. The plaintiff's first complaint, which sought both a permanent injunction and monetary damages, named as defendants several New York state officials in their official capacities. The plaintiff filed a first amended complaint on July 28, which also sought a permanent injunction and monetary damages against several New York state officials in their official capacities.

The defendants moved to dismiss the first amended complaint on October 6. They argued, inter alia, that the plaintiff's § 1983 claims for damages must be dismissed because the first amended complaint named only New York agencies and New York officials in their official capacities, and that such claims for damages against state agencies and officials acting in their official capacities are not permitted under § 1983. See Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989). On October 8, the Court ordered the plaintiff to file a second amended complaint or oppose the motion to dismiss by October 27.

The plaintiff filed a second amended complaint on October 27. That second amended complaint added additional factual allegations, withdrew the request for injunctive relief, and

revised the list of defendants. As with the first two complaints, however, it continued to list as defendants only New York state agencies and New York officials acting in their official capacities.

An Order of this Court required the defendants to move to dismiss the second amended complaint by December 1, and the plaintiff to oppose that motion to dismiss by December 17. The defendants timely filed their motion to dismiss the second amended complaint, again moving to dismiss the § 1983 claims for damages on the grounds that such claims could not be sustained against New York state agencies and New York officials acting in their official capacities.

On December 15, the plaintiff requested leave to file a third amended complaint. In the body of the letter, the plaintiff proposes an amended complaint that would sue the New York officials in both their individual and official capacities. The letter does not annex a proposed complaint or incorporate the defendants' position on this request. The letter also suggests that the "Court's motion practice schedule as established" -- which the plaintiff's counsel appears to erroneously believe requires submission of an opposition to the

defendants' motion to dismiss the second amended complaint by December 22¹ -- "shall not be affected."

Discussion

When a party seeks to amend a pleading after having already availed itself of the single opportunity provided as a matter of course by the Federal Rules of Civil Procedure, "a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). "The court should freely give leave when justice so requires." Id. "This is a liberal and permissive standard, and the only grounds on which denial of leave to amend has long been held proper are upon a showing of undue delay, bad faith, dilatory motive, or futility." Sacerdote v. New York Univ., 9 F.4th 95, 115 (2d Cir. 2021) (citation omitted). This litigation is at an early stage and providing an opportunity to file a third amended complaint would not unduly prejudice the defendants or cause significant delay. Accordingly, leave to amend is granted.

While leave to amend is granted, the Court notes that in handling this matter, the plaintiff's counsel O. Williams Igbokwe has fallen below the standards of practice expected in this District. It is hornbook law that, in order to pursue

¹ The Court's scheduling order in fact requires that any opposition be submitted by December 17.

claims for monetary damages against government officials under § 1983, a plaintiff must sue those officials in their individual capacities. Will, 491 U.S. at 71; Quinones v. City of Binghamton, 997 F.3d 461, 466 (2d Cir. 2021) (“Section 1983 allows plaintiffs to sue . . . officials in their personal capacities . . . for deprivations of constitutional rights.” (emphasis supplied)); see also 13D C. Wright & A. Miller Fed. Prac. & Proc. § 3573.1 (3d ed.) (“State and Territory officials sued in their official capacities also are not ‘persons’ under § 1983.”).

Although Igbokwe should have been familiar with this fundamental principle of pleading in § 1983 cases before filing the initial complaint in this action, to the extent that he was not, the issue was brought to his attention by the defendants’ motion to dismiss the initial complaint. Nevertheless, Igbokwe filed a second amended complaint that did not address this deficiency and did not seek to file a third amended complaint that corrected this core deficiency of the prior complaints until the eve of the deadline to file an opposition to the defendants’ motion to dismiss. In making this request, he failed to provide the Court with a proposed third amended complaint, as is “normal procedure.” Salveson v. JP Morgan Chase & Co., 663 Fed.Appx. 71, 76 (2d Cir. 2016) (citation omitted). He also failed to provide the defendants’ position on


the request for leave to amend, which would have assisted the Court in evaluating it.

In sum, in his litigation of this matter, Igbokwe has not acted with the "legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." N.Y. Rules of Prof. Con. 1.1(a). The Court expects that, as this litigation continues, Igbokwe abides by a higher professional standard than that which has been displayed to date.

Conclusion

The plaintiff's request for leave to amend is granted. The plaintiff shall file a third amended complaint by **December 20**, with the sole amendment being that requested in the plaintiff's December 15 letter. The Court sua sponte extends the time for the plaintiff to oppose the motion to dismiss from **December 17** to **December 20**. The defendants' reply remains due **January 5, 2022**.

Dated: New York, New York
December 17, 2021

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DENISE COTE
United States District Judge